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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,242	07/23/2001	Daniel L. Poole	5658/746	4793

7590 02/28/2003

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EXAMINER

MEISLIN, DEBRA S

ART UNIT

PAPER NUMBER

3723

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/911,242	POOLE ET AL.
Examiner	Art Unit	
Debra S. Meislin	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 February 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 4-10 and 16-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 4-10, 16-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

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1. The finality of the previous office action has been withdrawn. The amendment filed February 13, 2003 has been entered. This office action has been made final.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greer in view of Beesley et al.

Greer discloses all of the claimed subject matter except for having a pivotally mounted upper jaw with a spring, and a ratcheting mechanism/incremental teeth on the slide for engagement with the brake. Beesley et al discloses a pivotally mounted upper jaw with a spring and a ratcheting mechanism/incremental teeth on the slide for engagement with the brake. It would have been obvious to one having ordinary skill in the art to form the device of Greer with a pivotally mounted upper jaw with a spring and a ratcheting mechanism/incremental teeth on the slide for engagement with the brake to allow the jaws to be adjusted to grip a workpiece as taught by Beesley et al.

4. Claims 4-7, 16-17 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greer in view of Rhyn.

Greer discloses all of the claimed subject matter except for having a pivotally mounted upper jaw with a spring biasing the upper jaw toward the lower jaw. Rhyn discloses a pivotally mounted upper jaw with a spring biasing the upper jaw toward the lower jaw. It would have been obvious to one having ordinary skill in the art to form the

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device of Greer with a spring biasing the upper jaw toward the lower jaw to grip the workpiece as taught by Rhyn.

5. Claims 8-10, 18-20, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greer in view of Rhyn <sup>further</sup> in view of Beesley et al.

Beesley et al discloses a ratcheting mechanism/incremental teeth on the slide for engagement with the brake and gripping surfaces on the jaw. It would have been obvious to one having ordinary skill in the art to form the device of Greer with a ratcheting mechanism/incremental teeth on the slide for engagement with the brake and gripping surfaces on the jaw to allow the jaws to be adjusted to grip a workpiece as taught by Beesley et al.

6. Claims 4-10, 16-20, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 10, as best understood, "the lower jaw" should be changed to --the lower portion--.

In claim 16, line 11, as best understood, "the lower jaw" should be changed to --the second portion--.

7. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Applicant's arguments filed February 13, 2003 have been fully considered but they are not persuasive.

Greer discloses a brake lever being substantially the same length toward the gripping portion as the lower jaw/portion extends longitudinally toward the gripping portion, as broadly claimed by applicant.

In response to applicant's argument on page 6 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case there is some teaching, suggestion, or motivation to do so found in the references themselves as clearly set forth in the above rejections as follows:

It would have been obvious to form the device of Greer with a pivotally mounted upper jaw with a spring and a ratcheting mechanism/incremental teeth on the slide for engagement with the brake to allow the jaws to be adjusted to grip a workpiece as taught by Beesley et al.

It would have been obvious to form the device of Greer with a spring biasing the upper jaw toward the lower jaw to grip the workpiece as taught by Rhyn.

It would have been obvious to form the device of Greer with a ratcheting mechanism/incremental teeth on the slide for engagement with the brake and gripping surfaces on the jaw to allow the jaws to be adjusted to grip a workpiece as taught by Beesley et al.

In response to applicant's argument that the pivot point of Rhyn is below the lower jaw, how the two-member shank of Greer will be altered to accommodate the teeth of Beesley, and how the pivot will be placed, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The pivoting upper jaw that is spring biased toward the lower jaw is clearly disclosed by Rhyn. The pivoting upper jaw with a spring is clearly disclosed by Beesley.

9. Any inquiry concerning this communication should be directed to Examiner Meislin at (703) 308-3671.



D. S. Meislin  
Primary Examiner  
Group 3720, Art Unit 3723

February 24, 2003